

STATE OF MICHIGAN
COURT OF APPEALS

L & R HOMES, INC.,

Plaintiff-Appellant,

v

JACK CHRISTENSON ROCHESTER, INC.,

Defendant,

and

CHRISTENSON & CHRISTENSON, INC., d/b/a
JACK CHRISTENSON, INC., and JACK D.
CHRISTENSON,

Defendant-Appellees.

UNPUBLISHED

April 7, 2005

No. 250483

Oakland Circuit Court

LC No. 1999-017608-CZ

Before: Meter, P.J., and Bandstra and Borrello, JJ.

PER CURIAM.

In this equity action, plaintiff L&R Homes, Inc., appeals by right from a judgment of no cause of action. This is the second appeal of this case to this court, and for the reasons set forth in this opinion, we reverse the decision of the trial court and remand the matter back to the trial court for proceedings consistent with this opinion.

In this case, the record revealed that defendant Jack Christenson formed several different corporations in connection with his real estate business. Defendant Christenson stated that he formed Rochester, Inc. in an attempt to do real estate business in the Rochester housing market. Defendant Christenson testified at the trial in this matter that between 1992 and 1995, Rochester, Inc. was conducting real estate business for other entities that he owned. Rochester, Inc. was not providing any of the real estate services on its own behalf. He testified further that any income earned by agents working out of the Rochester, Inc. office was deposited into a general account held by Jack Christenson Inc. (hereinafter JCI).

All of the real estate agents employed at the Rochester, Inc. headquarters were licensed through JCI, and JCI paid the Rochester office's administrative and advertising costs. Rochester, Inc. had no interest in the commissions or revenues generated in its office, and according to

Christenson, it did not even have a checking account. Rochester, Inc. was not even mentioned on the Rochester office's policy of insurance.

The sole issue raised on appeal by plaintiffs is whether the trial court erred in refusing to pierce the corporate veil and hold JCI liable for Rochester, Inc.'s breach of its real estate lease. This Court's review of a decision not to pierce the corporate veil is de novo because of the equitable nature of the remedy. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 43-44; 436 NW2d 70 (1989). We review the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. MCR 2.613(C); *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). The law treats a corporation as an entirely separate entity from its stockholders, even where one person owns all of the corporation's stock. *Kline v Kline*, 104 Mich App 700, 702; 305 NW2d 297 (1981). This fiction is a convenience, "introduced to serve the ends of justice." *Allstate Ins Co v Citizens Ins Co of America*, 118 Mich App 594, 600; 325 NW2d 505 (1982). However, when this fiction is invoked to subvert justice, the courts may ignore it. *Id.*; see also *Paul v Univ Motor Sales Co*, 283 Mich 587, 602; 278 NW 714 (1938). The traditional basis for piercing the corporate veil has been to protect a corporation's creditors where there is a unity of interest of the stockholders and the corporation and where the stockholders have used the corporate structure in an attempt to avoid legal obligations. *Allstate, supra* at 600.

There is no single rule for when the corporate entity may be disregarded. *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 301; 386 NW2d 177 (1986). Instead, courts must consider all relevant facts in light of the corporation's economic justification to determine if the corporate form has been abused. *Klager v Robert Meyer Co.*, 415 Mich 402, 411-412; 329 NW2d 721 (1982). This Court has used the following standard for piercing the corporate veil: (1) the corporate entity is merely an agent or instrumentality of its shareholders or another entity; (2) the corporate entity was used to commit a fraud or wrong; and (3) and the plaintiff suffered an unjust loss or injury. *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994).

As this Court noted in plaintiff's first appeal, the most analogous cases are *Herman v Mobile Homes Corp*, 317 Mich 233, 239-243; 26 NW2d 757 (1947), and *Pfaffenberger v Pavilion Restaurant Co*, 352 Mich 1, 7; 88 NW2d 488 (1958). In *Herman*, the plaintiffs purchased a home from a land company. Shortly after the purchase, the house showed serious defects due to inferior materials and workmanship. The plaintiffs sued both the land company and its parent corporation for breach of contract. Based on facts similar to the case before us, our Supreme Court held that the land company was operated as a mere department of the parent corporation, and therefore, piercing its corporate veil was warranted. *Herman, supra* at 235. We note that the Supreme Court in *Herman* did not require plaintiff to prove fraud before it pierced the corporate veil. Instead it based its decision on the fact that (1) the parent corporation provided all the capital to the land company, (2) the two entities shared the same officers and directors, (3) the parent corporation's president determined the policies and decision of the land company, (4) the business of both entities was carried on at the same address, (5) the land company was established for the parent corporation's convenience and received no profit of its own, (6) the letterhead and correspondence between both parties and third parties indicated that the parent corporation and the land company were involved in the same business projects.

Herman, *supra* at 240. We hold that the facts of *Herman* are nearly identical to those before us in this matter.

We find the factual pattern in *Pfaffenberger* is also analogous to this case. In *Pfaffenberger*, the plaintiff's minor son was injured as result of a tavern unlawfully selling him liquor. *Pfaffenberger*, *supra* at 2. The tavern's sole asset was a liquor license. Its parent company actually owned the building and ran the tavern's operations. Predicated on these facts, our Supreme Court determined that the tavern was operated as a mere department of the parent company and therefore, piercing the corporate veil was warranted. Similar to our Supreme Court's ruling in *Herman*, plaintiffs were not required to prove fraud as a prerequisite to piercing the corporate veil.

Just as the evidence revealed in *Pfaffenberger* and *Herman*, the evidence here shows that the relationship between JCI and Rochester, Inc., merits disregarding their corporate entities and piercing the corporate veil. Rochester was merely an instrumentality of JCI and was operated as a department of its parent corporation. Review of the record indicates that Rochester, Inc. had no assets. All Rochester seemingly possessed was debt in the form of the obligations to be performed under the lease at issue in this case. JCI provided all of the capital for Rochester, Inc. Both Rochester, Inc. and JCI share the same officers and directors. JCI's president, Jack Christenson, made the business decisions on behalf of Rochester, Inc. In addition, Rochester, Inc. received no profit of its own. Instead, all profit derived from that office went to JCI. Both entities shared the same checking account, and both entities shared the same corporate logo. We therefore find both *Herman* and *Pfaffenberger* applicable to this case.

Having found that *Herman* and *Pfaffenberger* are applicable to this case, we turn to the legal elements employed by the trial court to reach its conclusion that plaintiff's failed to prove a cause of action. As this Court already noted in plaintiff's first appeal, plaintiff was not required to prove fraud as a condition of piercing the corporate veil of JCI. However, the trial court predicated its opinion, in large part, upon a failure by plaintiff to prove that defendants committed a fraud or wrong against plaintiff. Despite defense counsel's well-briefed arguments to the contrary, we find that the trial court erred by requiring plaintiff to prove actual fraud. Because the trial court relied on an incorrect statement of law regarding the elements necessary to pierce the corporate veil, it necessarily follows that the trial court's legal conclusions are clearly erroneous. Furthermore, this Court already stated that plaintiff lacked the opportunity to challenge the corporate form or question the capitalization of Rochester, Inc. at the time the lease was signed because it was unknown; the corporation did not exist yet. See *Finley v Union Joint Stock Land Bank of Detroit*, 281 Mich 214, 221; 274 NW 768 (1937). Because the evidence revealed that Rochester, Inc. was a mere instrumentality of JCI, the trial court's judgment for no cause of action is reversed.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello